

HIGH COURT OF CHHATTISGARH AT BILASPUR
SB: HON'BLE SHRI JUSTICE VIJAY KUMAR SHRIVASTAVA
FIRST APPEAL NO.196/2003

Appellant :

Praveen Kumar Shrivastava,
Aged about 43 years,
s/o. Late Shri K. Prasad,
presently working as Guard
and posted at Raigarh Railway
Station, Raigarh,
Tah. & Dist. Raigarh (CG).

Versus

Respondent :

Smt. Seema, aged about 37
Years, w/o. Shri Pravin
Kumar, C/o. Shri R.D. Lal,
r/o. Kushalpur, Near Khokho
Talab, Purani Basti, Santoshi
Mata Chowk, Raipur,
Tah. & Distt. Raipur (CG).

PRESENT

Shri P.R. Patankar, Counsel for the appellant.
Shri Somkant Verma, Counsel for the respondent.

O R D E R

(Dated 06/05/2006)

This appeal under Section 28 of the Hindu Marriage Act, 1955 has been filed against the order dated 10.9.2003 passed by the 2nd Additional District Judge Durg in Civil Suit No.10-A/01 whereby the suit filed by the appellant/husband for grant of decree of nullity of marriage was dismissed for non-payment of monthly maintenance to the respondent/wife awarded under Section 24 of the Hindu Marriage Act (for short, "the Act")

2. The appellant and respondent were married in accordance with the Hindu custom and rituals in the intervening

night of 29.2.1992 and 1.3.1992. The appellant to annul the marriage by a decree of nullity filed a petition under Section 12 of the Act against the respondent. During the pendency of the suit, on 23.6.1995, under Section 24 of the Act, the appellant was ordered to pay Rs.400/- per month to respondent towards her maintenance.

3. On 5.5.2003, respondent filed an application for dismissal of the suit on the ground of non-payment of maintenance by the appellant since 23.5.2002. Application was opposed by the appellant. The appellant in his reply stated that earlier he was depositing maintenance @ Rs.400/- per month as awarded by trial Court, but respondent by filing an application under Section 125 of the Cr.P.C. obtained ex-parte order from the Court of Judicial Magistrate, First Class, Durg, who allowed the respondent Rs.1,500/- per month towards maintenance and the order came to his knowledge on 13.8.2002, therefore, since then he is depositing Rs.1,500/- per month towards maintenance payable to respondent.

4. Learned Court below holding that the appellant did not pay maintenance @ Rs.400/- per month from 23.5.2002, therefore, dismissed the petition filed by the appellant under Section 12 of the Act.

5. It is not in dispute that after obtaining order from Matrimonial Court under Section 24 of the Act respondent/wife again preferred an application for grant of maintenance under

Section 125 of the Cr.P.C. and obtained a fresh order from the Judicial Magistrate, First Class, Durg, who vide order dated 30.8.2001 granted maintenance @ Rs.1,500/- per month. Admittedly, the amount awarded by the Judicial Magistrate, First Class, Durg is being paid by the appellant/husband to the respondent. Respondent did not claim that Judicial Magistrate, First Class, Durg after excluding her old grant i.e., Rs.400/- per month allowed by the Matrimonial Court has granted maintenance @ Rs.1,500/- per month to her. Therefore, in such circumstances, it is to be presumed that the amount of Rs.400/- per month is merged in fresh grant of Rs.1500/-.

6. Under Section 24 of the Act, maintenance *pendente lite* and expenses of proceedings are granted to wife or husband who has no independent income sufficient for support of livelihood and expenses to meet the cost of proceedings. Therefore, if other party willfully neglect to carryout the order passed by the Court, the Court may take recourse to its inherent power under Section 151 of the CPC. Having regard to the facts and circumstances of the case and conduct of the party, dis-obeying the order passed by the Court, the Court may either stay the proceedings if the proceeding has been initiated by the person against whom order has been passed and even dismissed his petition or appeal as the case may be if he deliberately neglects to comply with the order. If he/she is opposite party his/her defence may be struck off. The object behind it is that a person incapable to maintain himself/herself and for want of financial capacity is unable to contest his/her case in order to get justice may not be compelled to

take recourse of execution proceeding and involve himself/herself in another litigation, at the same time to protect the interest of the person who would suffer as a result of other party who willfully withhold payment disregarding court's order in order to harass him/her and thereby attempt to interfere in fair participation of his/her in getting justice.

7. Here in the instant case, appellant without committing any breach was paying the maintenance @ Rs.1500/- per month to the respondent, it was not the case of respondent/wife that she was granted maintenance by Judicial Magistrate, First Class in addition to Rs.400/- allowed to her earlier by the Matrimonial Court, therefore, paying Rs.1500/- per month assuming that it include Rs.400/- allowed earlier does not bring the appellant in the category of those who willfully neglected paying regular maintenance, therefore, his petition was not liable to be dismissed on the ground of non-compliance of the order.

8. In the result, the impugned order passed by the lower court dated 10.9.2003 is set aside. The case is remanded back to the lower court having jurisdiction to hear & decide the case with a direction to re-admit the case and to decide the same in accordance with law and the evidence recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

Both the parties shall appear before the lower court having jurisdiction to hear and decide the case on 12.5.2006.

Certified copy as per rules.

Sd/-
V.K.Shrivastava
Judge

Roshan